

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK NUNEZ, et al.,

Plaintiffs,

11-CV-5845 (LTS) (JCF)

-against-

ECF CASE

CITY OF NEW YORK, et al.,

Defendants

**AFFIDAVIT IN SUPPORT OF
ENTRY OF CERTIFICATE OF
DEFAULT BY THE CLERK
REGARDING
DEFENDANT C.O. NEGRON**

-----X
STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

VASUDHA TALLA, being duly sworn, deposes and says:

1. I am a member of the bar of this court and am associated with the firm of Emery Celli Brinckerhoff & Abady LLP, attorneys for Plaintiffs in the above-entitled action, and I am familiar with all the facts and circumstances in this action.

2. I make this motion pursuant to Federal Rule of Civil Procedure 55(a) and Rule 55.1 of the Civil Rules for the Southern District of New York for the entry of a certificate of default by the Clerk against Defendant C.O. Negron (Shield #14362).

3. Pursuant to Local Civil Rule 55.1 of the Southern District of New York, I affirm, upon information and belief, that Defendant Negron is not an infant, a minor, an incompetent person, or a member of the military service of the United States.

4. On August 18, 2011, Plaintiff Mark Nunez commenced the instant action by the filing of a complaint. *See* ECF No. 2.

5. On May 24, 2012, Plaintiff Mark Nunez, along with eleven other individual Plaintiffs, filed an Amended Complaint. *See* ECF No. 15.

6. On September 4, 2012, Plaintiffs filed a Second Amended Complaint in this action. *See* ECF No. 34. An amended summons was issued for Defendant Negrón at that time.

7. The Second Amended Complaint and the Summons were personally served upon Defendant Negrón on November 28, 2012 by leaving a true copy of process upon a person of suitable age and discretion identifying herself as Emilia Vargas, mother of Defendant Negrón, at Defendant Negrón's place of residence. A true and correct copy of the affidavit of service of the Second Amended Complaint and the Summons upon Defendant Negrón was filed with the Court on December 5, 2012 and identified as Docket Number 53. *See* ECF No. 53.

8. On March 4, 2013, Magistrate Judge James C. Francis granted Defendant Negrón an extension of time until April 1, 2013 to answer the Second Amended Complaint. *See* ECF No. 72. Judge Francis further directed counsel for the City of New York to forward a copy of his order to Defendant Negrón at his last known address. I have been informed by the counsel for the City of New York, Arthur Larkin, Esq., that counsel for the City of New York mailed Judge Francis's order to Defendant Negrón at his last known address by regular and certified mail on or about March 11, 2013. I have been further informed by Mr. Larkin that the certified letter to Defendant Negrón was returned to counsel unclaimed.

9. To date, Defendant Negrón has neither answered the complaint nor otherwise moved with respect to the complaint, and the time for Defendant Negrón to answer the complaint has expired. Defendant Negrón has not appeared in this action.

WHEREFORE, Plaintiffs respectfully request entry of the annexed Clerk's Certificate of Default against Defendant Negrón.

Dated: New York, New York
December 23, 2013


VASUDHA TALLA

Sworn To Before Me This
23 of December, 2013


NOTARY PUBLIC

Tirek J. Gayle
Notary Public, State Of New York
No. 01GA6066847
Qualified In Orange County
Commission Expires Nov 28, 2017